



NEBRASKA

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We sometimes receive requests for clarification of NDE Rules 11 and 51 as they relate to the provision of services to children with disabilities in early childhood education programs. This memo addresses the question about whether it is permissible to continue serving a child who has reached the age of kindergarten eligibility in an early childhood education program if the child's IEP team has determined that setting to be the appropriate placement.

Please keep in mind the following key points from Nebraska statute and NDE Rules 11 and 51 when you contemplate such a decision.

- NebRevStat 79-1101 (3)(b) defines an early childhood education program as “any prekindergarten part-day or full-day program or in-home family support program with a stated purpose of promoting social, emotional, intellectual, language, physical and aesthetic development and learning for children from birth to kindergarten entrance age and family development and support.”
(Emphasis added)
- NebRevStat 79-201 (1)(b) “A child is of mandatory attendance age if the child will reach six years of age prior to January 1 of the then-current school year.”
- NebRevStat 79-214 (1)(a) “the school board of any school district shall not admit any child into the kindergarten of any school of such school district unless such child has reached the age of five years on or before July 31 of the calendar year in which the school year for which the child is seeking admission begins.”
- Rule 51-007.07B2 states that “the IEP team shall consider the results of the initial evaluation or most recent evaluation of the child, and the academic, developmental and functional needs of the child.”
- Rule 51-007.07B7 states “The IEP team shall consider whether the child needs assistive technology devices and services”
- Rule 51-007.07C3 states “Each school district or approved cooperative shall ensure assistive technology devices or assistive technology services, or both, as defined in Rule 51-003.02 and 51-003.03 are made available to any child with a disability if required as part of the child's special education, related services, or supplementary aids and services.

*This guidance document is advisory in nature but is binding on an agency until amended by such agency. A guidance document does not include internal procedural documents that only affect the internal operations of the agency and does not impose additional requirements or penalties on regulated parties or include confidential information or rules and regulations made in accordance with the Administrative Procedure Act. If you believe that this guidance document imposes additional requirements or penalties on regulated parties, you may request a review of the document.

- Rule 51-008-01C2 states that “The placement decision is made in conformity with the least restrictive environment requirements in Rule 51-008.01 and based on the child’s unique needs and not on the child’s disability.” (Emphasis added)
- Rule 51-008.01E2 states that the school district shall insure that the educational placement of a child with a verified disability is based on his or her individual education program (IEP).
- Rule 51-008.01G requires that unless a child’s IEP or IFSP requires some other arrangement, the child must be educated in the school which he or she would attend if not disabled.
- Rule 51-008.01I requires that a child with a disability must not be removed from education in age-appropriate regular classrooms solely because of needed modifications in the general curriculum. (Emphasis added)
- Rule 11-002.25 states “Prekindergarten programs means all early childhood part-day or full-day center-based programs or in-home family support (home-based) programs provided for children who have not reached the age of five on or before July 31 of the current school year.”

Failure to meet the requirements of Rule 51 will result in non-compliance and the need to develop a corrective action plan (CAP). Failure to meet the requirements of Rule 11 will result in loss of program approval.

What if a kindergarten age child qualifies for special education services and the IEP team determines that the early childhood program is the appropriate placement for the child?

All children in Nebraska, including children with disabilities, are entitled to attend kindergarten when they meet the age eligibility requirement. Kindergarten is intended to be a program for 5-year-olds, and schools have a responsibility to support the learning of all children in the kindergarten program. For some children, this may require the school district to provide additional supports and services in the kindergarten setting, as required by law. The supports and services necessary for successful participation and progress of a child with a disability in the kindergarten classroom must be determined by each child’s IEP team. In most cases, the IEP team will determine that it is appropriate for the child to attend kindergarten with same-age peers, and to receive special education and related services within the kindergarten setting. IEPs must be based on the requirements of Rule 51 and not on a parent’s desire to delay enrollment in kindergarten or needed modification to curriculum (See Rule 51-008.01). Children will receive special education services, required by their IEP, at their kindergarten school. This ensures access to the kindergarten curriculum and equity of opportunity to actively participate in learning with typically developing peers. The school district is responsible for providing appropriate resources to successfully support children with diverse learning abilities in the kindergarten program.

What if parents of a child who is not on an IEP/IFSP choose to delay their child's entrance to kindergarten and want their child to continue another year in the early childhood program?

By Rule 11 definition, the early childhood program serves children from **birth to kindergarten entrance age**. Schools have the responsibility to meet the learning needs of kindergarten children as they come to school. Schools also have the right to determine the grade level placement of children at the time of enrollment. Parents have the right to make their decision about when to enroll their child based on what they believe is best for their child and what options are available to them. However, it is not the intent of Rule 11 for school – or ESU – operated early childhood programs to provide extra-year services. If a school or ESU offers kindergarten as part of a multiage early childhood-kindergarten program, it is the intent of Rule 11 that the kindergarten-age children who are enrolled move on to the next age/grade level with their same-age peers the following year.

If you have any further questions, please contact:

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